Supreme Court, U.S.
FILED

08-650 NOV 13 200

OFFICE OF THE CLERK
William K. Suter, Clerk

112 (1)

No. _____

In The

SUPREME COURT OF THE UNITED STATES

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George C. Evans - Petitioner,

v.

David Eldridge and the
Texas Department of Public Safety – Respondents,

---

On Petition for a Writ of Certiorari to
Supreme Court of Texas

---

# PETITION FOR WRIT OF CERTIORARI

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George C. Evans
344 CR 1297
Yantis, Texas 75497
903-8787070

---

## QUESTIONS PRESENTED

Whether the 14th District, the 5th District Court of Appeals and the Texas Supreme Court **erred** in concluding and ruling (District Court claiming lack of jurisdiction) (Court of Appeals and Texas Supreme Court denying to hear Writ of Mandamus on original motion and requests for rehearing; And in doing so, refused to accept, acknowledge and require an order of the 14th District Court of (Dallas, Texas(sustained by **Mandate of the Court of Appeals** (Dallas, Texas) to be duly executed? Said mandate has no statute of limitations and has never been executed as to requirements, "Jury Trial for Damages Only", as so ordered by the 14th District Court and affirmed (not overturned) by the Court of appeals.

The current courts are governed by new judges vs. the orders and mandate by the same courts but different judges in a prior time frame.

The issue is; Do current judges of the same courts have the authority to ignore orders and mandates of the same courts, by different judges in a prior time frame, when the orders of the judges of the prior court decisions have **never been overturned, have not been executed, and have no statute of limitations**?

The right to a trial **"trial for damages only"** as ordered and mandated is, a due process and 5th and 14th constitutional right. Can the courts simply ignore this right?

## PARTIES TO THE PROCEEDING

1) Petitioner/
Plaintiff Pro se:

George C. Evans
344 CR 1297
Yantis, TX 75497
Tel: 903-878-7070
Cell: 903-348-1600

2) Respondents:

(1) Texas Attorney General's Office, Austin, Texas

(1) David Eldridge and The Department of Public Safety – State of Texas, Austin, Texas

(2) Honorable Judge Mary Murphy – Presiding Judge 14th District Court, Dallas County, Texas

(3) Court of Appeals, Fifth District of Texas, Dallas, Texas
Justices:
A. Judge Joseph B. Morris
B. Judge Ridhter
C. Judge Mazzant

(4) Supreme Court of
Texas, Austin, Texas

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(A) Order of the 14th District Court, Dallas, Texas, granting Plaintiffs' Motion for Summary Judgment, ordering a trial by jury for damages only and denying Defendants' Motion for Summary Judgment. (September 22, 1994)

(B) Mandate of the 5th District Court of Appeals, Dallas Texas, affirming the 14th District Court's denial of Defendants' Motion for Summary Judgment on appeal by defendants'. (July 26, 1995)

(C) Opinion of Justice Sue Lagarde, 5th District Court of Appeals regarding decision by court affirming the trial court's order denying appellants' motions for summary judgment (April 6, 1995)

(D) Excerpts of the testimony of Judge John McClellan Marshall contained within the court transcript regarding Plaintiffs' Motion

for Rehearing to the 14th District Court, Dallas, Texas (January 24, 2008)

(E) Dallas Morning News Article Dated August 4, 2008 entitled "State District Court Judge says he made mistake in wrongful death suit ruling"

(F) Order of the 14th District Court, Dallas, Texas, Confirming Lack of Jurisdiction (January 24, 2008)

(G) Memorandum Opinion of the 5th District Court of Appeals denying Writ of Mandamus (March 14, 2008)

(H) Order of the 5th District Court of Appeals denying Writ of Mandamus (March 14, 2008)

(I) Order of the 5th District Court of Appeals denying Motion for Rehearing of Writ of Mandamus (March 27, 2008)

(J) Official Notice of The Supreme Court of Texas denying Petition for Writ of Mandamus (July 11, 2008)

(K) Official Notice of The Supreme Court of Texas denying Motion for Rehearing for Petition for Writ of Mandamus (August 29, 2008) (Stamped: "Don't Mess With Texas")

## TABLE OF AUTHORITIES

CASES

*Roman Catholic Diocese v County of Dallas,* 228 S.W.3d 477, 480 (Tex App. – Dallas, July 2, 2007)

*Cook v Cameron,* 733 S.W.2d 138, 139, 140 (Supreme Court of Texas – July 8, 1987)

*Browning, et al, Relators, v The Honorable John L. Placke, Judge, et al, Respondents,* 698 S.W.2d 362, 363, No. C-4425 (Supreme Court of Texas – Oct. 30, 1985)

*Sue Johnson, Relator, v The Honorable Fourth Court of Appeals, Respondent, 700* S.W.2d 916, No C-4100 (Supreme Court of Texas – Dec. 11, 1985)

*In Re: Allen Dickason, Relator,* 987 S.W.2d 570, No. 98-0148 (Supreme court of Texas – Oct. 15, 1998)

*Evans v Abney,* 396 U.S. 437, *Cite as* 90S.Ct. 618 at 629 (1970)

*Walker v Packer,* 827 S.W.2d 833, 840 No. C-9403, (Supreme Court of Texas – Feb. 19, 1992) *Id.* at 839-40 (Abuse of Discretion)

*In Re: The Prudential Insurance Co. of America and Four Partners, L.L.C., d/b/a, Prizm Partners, Relator,* No. 02-0690 (Supreme Court of Texas – Sept. 3, 2004) Pages 124, 126.

*Attorney General of Texas John Cornyn* No. 01-00-00758 CV. – Cite 27 SW 3d 327, 329 (Tx App – Houston 1st Dist – Sept. 7, 2000)

*Kazubowsk v Kazubowski,* 45 Ill.sd 405, 259 N.E.2d 282, 290

*Pettie v Penn* (LA. App.) 180 So.2d 66-69
*U.S. v Smith,* DC Ioun 249 F.Supp. 515, 516

*Trinity Episcopal Corp. v. Romney,* D.D.N.Y. 387 F.Supp. 104?, 1084

*Vaughn v State* 3 Tenn Crim. App. 54, 456, S.W. 2d 879, 883

ROMAN CATHOLIC DIOCESE
OF DALLAS, Appellant

COUNTY OF DALLAS TAX COLLECTOR, Dallas County Community College District, Parkland Hospital District, Dallas School Equalization Fund, City of Dallas, Dallas Independent School District, and Downtown Improvement District No. 1, Appellees.

No. 05-05-01269-CV

Court of Appeals of Texas, Dallas.

July 2, 2007.

Cite as 228 S.W.3d 475 (Tex.App.-Dallas 2007)

A collateral attack may be used to set aside a judgment that is void or involves fundamental error.

A party making a collateral attack on a judgment does not need to meet the requirements of a bill of review. *Id.* There is no set procedure for a collateral attack and no statute of limitations.

## CITATIONS OF OPINIONS AND ORDERS

Shown in the Appendix listing and attached as listed.

A. Order of the 14th District Court, Dallas, Texas
B. Mandate of the 5th District Court, of Appeals, Dallas, Texas
C. Opinion of the 5th District Court of Appeals, Dallas, Texas
F. Order of the 14th District Court, Dallas, Texas
G. Memorandum Opinion of the 5th District Court of Appeals, Dallas, Texas
H. Order of the 5th District Court of Appeals, Dallas, Texas
I. Order of the 5th District Court of Appeals, Dallas, Texas
J. Notice of the Supreme Court of Texas, Austin, Texas
K. Order of the Supreme Court of Texas, Austin, Texas

## JURISDICTION

The date of the order sought by this Petitioner to be reviewed is August 29· 2008 when the Supreme Court of Texas denied the motion for a rehearing on Petitioner's Writ of Mandamus.

The statutory provisions believed to confer with this courts jurisdictional right to review and rule on a writ of certiorari, are an abuse of due process, supported by the 5th and 14th Constitutional Amendments of the United States of America. This court is the last court of recourse for the Petitioner to affirm that existing orders and mandates are executed and that justice is served, pursuant to Judge Marshall's position and sworn statement.

The jurisdiction of this court is involved under 28 USC § 1257 (A). as quoted:

Final judgment or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by Writ of Certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission

held or authority exercised under, the United States.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### DUE PROCESS OF LAW

Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. Kazubowski v. Kazubowski, 45 Ill.2d 405, 259 N.E.2d 282, 290. Phrase means that no person shall be deprived of life, liberty, or property or of any right granted him by statute, unless matter involved first hsall have been adjudicated against him upon trial conducted accordingly to established rules regulating judicial proceedings, and it forbids condemnations without a hearing. Pettit v. Penn, La.App., 180So.2d 66, 69. The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that

the means selected shall have a reasonable and substantial relation to the object being sought. U.S. v. Smith, D.C.Iowa, 249 F. Supp. 515, 516. Fundamental requisite of "due process" is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. Trinity Episcopal Corp. v. Romney, D.D.N.Y., 387 F.Supp. 1044, 1084. Aside from all else, "due process means fundamental fairness and substantial justice. Vaughn v. State, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883.

## FIFTH CONSTITUTIONAL AMENDMENT (ATTACHED)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment or a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time or War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## FOURTEENTH CONSTITUTIONAL AMENDMENT (ATTACHED)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

This is a wrongful death case that occurred on February 27, 1990. Petitioner George Evans, (appearing as Plaintiff Pro se), won a wrongful death verdict by order of the 14th District Court (Dallas, Texas), Judge John M. Marshall presiding on September 15, 1994. (Appendix "A") On April 6th 1995 the Court of Appeals Denied and appeal of immunity by the defendants and affirmed the 14th District Court's Order for Summary Judgment against the Texas Department of Public Safety and David Eldridge in both his individual and official capacity; thus liability was firmly established (Appendix "B") The order of the 14th District Court was for a JURY TRIAL FOR DAMAGES ONLY! This order as previously stated was AFFIRMED, NOT OVERTURNED BY THE COURT OF APPEALS.

The case was, by error, docketed for Jury Trial instead of Jury Trial for Damages Only as ordered and Mandated by two courts. A jury trial in September 1995 for liability was held even though liability had been previously established, not overturned and cannot, by law, be ruled on or established again. The improper, illegal, (void) jury trial held the officer non-liable for the killing, when liability had previously been established by two courts uncontroverted, See Court of Appeals Opinion (Appendix "C") and Mandate (Appendix "B")

The mandate was never seen by the petitioner, (Plaintiff Pro se), nor the Judge until July 2006, nearly eleven years after the improper, illegal jury trial of September 1995. Petitioner was advised by a Dallas, Texas law firm (who were in trial against Evans same prior defendants) that he, Evans, should locate the mandate as he would be shocked as to it's wording in lieu of what had occurred, i.e. the improper jury trial. After days of going through a large Court of Appeals file and finding all legal proceedings, documents, etc. including Court of appeals Oppinion, (Appendix "C"), except the mandate, (Appendix "B"), Petitioner was advised by the Court of Appeals clerk that the Mandate had been burned???

The mandate was then searched for and located in the records division of the George L. Allan, Sr. Courts Building. The mandate was not in the file with all other court records of this case, but in a separate file cabinet and located by a clerk. Upon review of the mandate I immediately faxed the mandate to Judge Marshall who said; I made a terrible mistake and as a result you were rendered a horrible miscarriage of justice, and I will do everything in my power to help right a wrong and see that justice is served. See Judge's sworn testimony (Appendix "D") pages 17, 18. 19, 21, 22, 23, 24, 25, so numbered in the court document of sworn testimony dated January 24, 2008, as well as newspaper article (Appendix "E")

Petitioner then filed a Motion of "Attack on Collateral Judgment"

> (1) *Roman Catholic Diocese v County of Dallas,* 228 S.W.3d 477, 480 (Tex App. – Dallas, July 2, 2007)
>
> 15. Judgment ¶ 486(1) 501 A collateral attack may be used to set aside a judgment that is void or involves fundamental error.
> ¶ 528 There is no set procedure for a collateral attack on a judgment and no statute of limitations.

The 14th District court, (now with a different judge on the bench than the judge who had granted Summary Judgment for the Petitioner, Judge Marshall), with Judge Mary Murphy presiding, denied the motion, claiming lack of jurisdiction (Appendix "F")

Petitioner then filed a Writ of Mandamus with the Dallas 5th District Court of Appeals which by order was denied as was a Motion for Rehearing. (Appendix "G" and "H")

Petitioner filed a Motion for a Writ of Mandamus with the Texas Supreme Court and a Motion for Rehearing, both denied, on July 11, 2008 and August 29, 2008 respectively. (Appendix "J" and "K")

By refusing to enforce, recognize, or give any value to an outstanding court order, affirmed by a Court of Appeals Mandate, granted by prior judges and never overturned by any court of law; the existing judges of the 14th District Court, Court of appeals and Supreme Court of Texas violated Petitioner's right of due process and his rights under the U.S. Constitutional 5th and 14th Amendments. Petitioner had been granted, by law, the right to a "Jury Trial for Damages Only" by two courts which order and mandate remain in effect until executed and there is no statute of limitations. The courts also failed to consider and acknowledge the sworn testimony of Judge John M. Marshall who served 21 years on the bench of the 14th District Court. Judge Marshall stated in sworn court testimony, (Appendix "D"), that the improper, illegal jury trial that he held (after previously ruling on liability by a summary judgment order for the plaintiff), lacked jurisdiction, should be declared void, and a trial for damages only held.

This case was and is a high profile football, with the attorney general and governor being involved. The attorney general's office arrogantly bragged that they had not lost a wrongful death case in 20 years. Losing in two courts to a pro se, non-lawyer is as equates to throwing gasoline on a hot fire.

There is massive case law that requires mandate's to be duly executed. By refusing to enforce this principal the courts are violating the petitioners civil rights, due process and the right to

be heard in a court of law before a jury as mandated.

## RESONS FOR GRANTING THE PETITION

A state court, Texas Supreme Court has decided a Federal issue (Denial of Due Process and violation of Petitioner's 5th and 14th Constitutional rights) by refusing to execute an order of the 14th District Courts and Mandate of the 5th District Court of Appeals affirming same order; Whereas such order and mandate have no statute of limitations, have never been overturned and remain outstanding to infinity until executed.

Petitioner prays that this Honorable Court grant a Writ of Certiorari: Directing the Supreme Court of Texas to order a Trial by Jury for Damages Only as so mandated by the 5th District Court of Appeals, Dallas, Texas.

A motion for rehearing complaining of Petitioner's violation of due process and 5th and 14th Amendments was timely filed with the Texas Supreme Court on July 22, 2008, whereas giving this court jurisdiction as the Last Court of Resort.

Respectfully submitted

George C. Evans
Petitioner (Plaintiff Pro se)
344 CR 111297
Yantis, Texas 75497
Phone: 903-878-7070

Appendix ("A")

CAUSE NO. 90-10536-A

| | | |
|---|---|---|
| **GEORGE C. EVANS,** | § | IN THE DISTRICT |
| **FRANCES EVANS** and | § | COURT |
| **GARY EVANS** | § | |
| PLAINTIFFS, | § | OF DALLAS COUNTY, |
| | § | TEXAS |
| **vs.** | § | |
| | § | |
| **DAVID ELDRIDGE,** et al | § | 14TH JUDICIAL |
| DEFENDANTS. | § | DISTRICT |

## ORDER

On the 15th day of September, 1994 the court heard and considered the summary judgment motions filed by the various Plaintiffs and the State Defendants and also considered related motions to strike the State Defendants' summary judgment response and supplement. The Court, having considered the motions to strike, the summary judgment motions, the evidence offered in support of the summary judgment motions, and the argument and authorities of counsel is of the opinion that the following order should be entered.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Plaintiffs Frances P. Evans and Gary C. Evans' Motion to Strike Summary Judgment Response of the DPS or, in the

2. Alternative, Motion to Require Segregation of Argument and Evidence is **DENIED;**

3. Plaintiffs Frances P. Evans and Gary C. Evans' Motion to Strike Defendant Eldridge and other DPS Defendants; Second Supplemental Reply to Plaintiffs' Response to Defendants' Motion for Summary Judgment is **DENIED;**

4. Plaintiff George Evans' Motion for Summary Judgment Against the Defendant, David Eldridge, individually and in his official capacity, under the Texas Tort Claims Act, Chapter 101.021(1)(B)(2) (Texas Civil Practice and Remedies Code) as well as 42 USC§1983 (individually and official capacity) is **GRANTED**, and he is ordered to proceed to trial on the issue of the amount of damages.

5. Plaintiff Frances P. Evans' Motion for Partial Summary Judgment Against the Defendant Texas Department of Public Safety under §101.021(2) of the Texas

Civil Practice and Remedies Code is GRANTED and she is ordered to proceed to trial on the issue of the amount of damages to be awarded;

6. Defendant Eldridge's Motion for Summary Judgment is DENIED;

7. Defendant's Supplemental Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the matters at issue between these parties relative to the damages be awarded in this case shall be set over for trial and be tried to a jury with a verdict rendered.

SIGNED this 22nd day of September, 1994

"s/"

JUDGE PRESIDING

Appendix ("B")

AUG 0: 1995
THE STATE OF TEXAS

FILED
JUL 28 1995
BILL LONG
DIST. CLERK, DALLAS CO, TEXAS
DEPUTY

**Court of Appeals**
**Fifth District of Texas at Dallas**

**MANDATE**

**TO THE 14TH JUDICIAL DISTRICT COURT OF DALLAS COUNTY, GREETINGS:**

Before the Court of Appeals for the Fifth District of Texas, on the 6th day of April, 1995, the cause on appeal to revise or reverse the judgment between

| | |
|---|---|
| **DAVID ELDRIDGE, TEXAS DEPARTMENT OF PUBLIC SAGETY,** Appellants | Appeal from the 14th Judicial District Court of Dallas County, Texas. (Tr.Ct.No. 90-10536-A) |
| No. 05-94-01618-CV | Opinion delivered by Justice Lagarde, Justices Chapman and James also participating. |
| GEORGE C. EVANS, FRANCES P. EVANS, and GARY C. EVANS, Appellees | |

was determined; and therein this Court made its order in these words:

In accordance with this Court's opinion of this date, the September 22 1994 order of the trial court denying appellant David Eldridge's motion for summary judgment and denying appellants David Eldridge and the Texas Department of Public Safety's supplemental motion for summary judgment is **AFFIRMED**. It is **ORDERED** that appellees George C. Evans, Frances P. Evans, and Gary C. Evans recover their costs of this appeal from appellants David Eldridge and the Texas Department of Public Safety.

This Court's November 9, 1994 order staying trial on the merits in this cause is **LIFTED**.

**WHEREFORE, WE COMMAND YOU** to observe the order of the Court of Appeals for the Fifth District of Texas, in this behalf, and have it duly obeyed and executed.

**WITNESS**, the HON. LINDA THOMAS, Chief Justice of the Court of Appeals, with the

Seal thereof affixed, at the City of Dallas, this 26th day of July, 1995.

MELANIE KEETON, CLERK

"s/"

By _____

DEPUTY CLERK

Appendix ("C")

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT BELOW.

OPINIONS BELOW

For Cases From State Courts:

The opinion of the higher state court to review the merits appear at Appendix "C" and is unpublished.

1995 Tex. App. Lexis 3946, *

3 of 5 DOCUMENTS

DAVID ELDRIDGE, TEXAS DEPARTMENT OF PUBLIC SAFETY, Appellants v. GEORGE EVANS, FRANCES P. EVANS, and GARY C. EVALS, Appellees

No. 05-94-01618-CV

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS

1995 *Tex. App.LEXIS 3946*

April 6, 1995, Opinion filed

OPINION BY: SUE LAGARDE

OPINION: OPINION

Opinion By Justice Lagarde

David Eldridge and the Texas Department of Public Safety appeal the trial court's interlocutory order denying their motion for summary judgment that was based on claims of qualified, official, and governmental immunity. We affirm.

FACTUAL BACKGROUD:

1995 Tex. App. LEXIS 3946, * Page 3

Gunshot wound #3 as described on page 2 of the autopsy report, with its positioning, confirm that the left arm had to be in a downward, against the body position, and NOT engaged in grappling for the gun or a frontal confrontation as the police officer reports, affidavits, and depositions would indicate.

The entrance and exit holes of the wounds makes [sic] it extremely doubtful , due to body positioning, that there was a close confrontation and/or wrestling for the gun as claimed by the officer.

Patricia Holmes, an officer in charge of the internal affairs division of DPS, Investigated the incident and testified in her deposition that Evans did not resist arrest.

Page 5

The facts underlying the issue of whether Eldridge's shooting Evans was objectively reasonable are riddled with inconsistencies. Eldridge's stated reason for shooting Evans was his fear that Evans would take his gun and shoot him with it. Garrett's 1990 affidavit, Holmes's deposition, and Dr. Sperry's affidavit controvert Eldridge's statements that Evans was trying to take his gun from him when he shot Evans. Thus, the record does not conclusively establish that Evans was trying to wrest Eldridge's gun from him when he shot him. Eldridge has failed to show as a matter of law that [*18] he was entitled to qualified immunity from appellees' section 1983 claim of unlawful use of excessive force. We overrule appellants' first point of error to the extent it concerns Eldridge's entitlement to qualified immunity on appellees' section 1983 claim for unlawful use of excessive force.

Page 6

All of the arguments and evidence that Eldridge's shooting Evans was in good faith depend upon one crucial fact—that Evans was struggling with Eldridge and trying to wrest the gun away from him when he shot him. As explained above, appellees' summary judgment evidence

controverted appellants' evidence on this issue. Because appellants failed to conclusively prove that fact, their evidence of that fact fails to prove conclusively that Eldridge acted in good faith. Accordingly, the trial court did not err in overruling Eldridge's motion and supplemental motion for summary judgment that were based on his entitlement to official immunity from appellees' claims [*21] of negligence under state law. We overrule appellant's second point of error.

We affirm the trial court's order denying appellants' motions for summary judgment based on Eldridge's entitlement to official immunity.

SUE LATARDE

JUSTICE

Appendix ("D")

**PLAINTIFF'S MOTION FOR REHEARING**
**JANUARY 24, 2008**
**PAGE 1**
REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 90-10536-A

| | | |
|---|---|---|
| **GEORGE C. EVANS,** | § | IN THE DISTRICT |
| PLAINTIFF, | § | COURT |
| | § | |
| **vs.** | § | OF DALLAS COUNTY, |
| | § | TEXAS |
| **DAVID ELDRIDGE,** et al | § | |
| DEFENDANTS. | § | |
| | § | 14TH JUDICIAL |
| | § | DISTRICT |

## PLAINTIFF'S MOTION FOR REHEARING

On the 24th day of January, 2008, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Mary Murphy, Judge Presiding, held in the Dallas, Dallas County, Texas.

Proceedings reported by computerized stenotype machine.

DIANE L. ROBERT, CSR, RPR
TEXAS CSR NO. 2179
Expiration Date: 12/31/08
Official Court Reporter of the 14th
Judicial District Court
Dallas County, Texas
600 Commerce Street, Dallas, Tx 75202

A. My Name is John McClellan – That's spelled M-small-C-capital-C-L-E-L-L-A-N, Marshall; 3418 Daniel Avenue; University Park, Texas, 75205.
Q. What is your current occupation?
A. I'm Senior Judge of the 14th Judicial District of Texas.
Q. What was your prior occupation?
A. I was Judge Presiding of the 14th Judicial



A. District of Texas for 20 years.
Q. Do you recall trying a case Evans versus Eldridge and the Department of Public Safety?
A. Yes, I do.
Q. Did George Evans represent himself as pro se?
A. Yes, that is correct.
Q. Did you render summary judgment for the plaintiff Evans and deny summary judgment to the Defendants?
A. Yes, specifically the Court granted summary

Judgment for the Plaintiff on the issue of liability and against the Defendants on the issue of immunity.

Q. Did the Defendants file an appeal on this order?
A. Yes.
Q. Is it correct that the Court of appeals by mandate affirmed your order while denying the Defendant's motion and supplemental motion for immunity to the best of your knowledge?
A. Yes.
Q. Does the Court of Appeals mandate, which I'm sure you've seen. Does this mandate in any way overturn your motion for the Plaintiff and order to proceed to jury trial for damages only?
A. No.
Q. To the best of your knowledge is there any time limit, expiration date or statute of limitation on the Court of appeals mandate?
A. Not as such. The Trial Court is expected to carry out the mandate promptly.



Q. Was your order plus the Court of Appeals mandate properly executed?
A. No.

Nobody called to my attention the fact that that was submitting to the jury an issue that was already law of the case as far as what the Court of Appeals' opinion had decided, and that was my mistake; I should have submitted either find liability and find damages, or just submit damages. I made a mistake. As a result, the jury came back and they found no liability, so they never reached the issue of damages, which is what the Court of Appeals had ordered me to try. And, as a result, I entered a judgment that was not proper and not in conformity with the Court of Appeals' order.

Q. In other words, you submitted – did you submit it in a manner that was consistent with the mandate and the Court of Appeals, you're in essence saying you did not.
A. I did not.
Q. In other words, a jury trial was held for liability whereas two courts and four judges had previously ruled liability, i.e., wrongful death.
A. Correct.
Q. Knowing what you know today, was this a legitimate, proper valid trial and should it be deemed

as void?

A. Based on my review of the authorities I would have to say that the error was fundamental and the judgment should – was not proper.

Q. So, in essence, you're saying your opinion about prevailing law that you're aware of, the jury trial should be deemed void and set aside.

A. The judgment based upon that jury trial based on my research probably is void.

A. I believe that – I believe that because the judgment on the jury trial is void, that the erroneous submission to the jury requires a new trial solely on the issue of damages.

Q. --but since the Court of appeals mandate has no expiration or statute of limitations, do you feel the current 14th District Court which the mandate is not directed to a judge, it's



directed to the Court, that the Court currently has jurisdiction to follow the Court of Appeals mandate?

A. I think that's probably true, although I would never presume to inflict my opinion on a sitting trial judge.

Q. Did the Court of Appeals overturn your summary



judgment order for the Plaintiff directing same for jury trial for damages only?

A. No.

Q. Your Honor, in my opinion, not one out of 50 or even a hundred judges or corporate executives would come forward acknowledging an error, a mistake, uneven though it was unintentional and was an unintentional error, not your fault but under your leadership, under your court, under your battle station, under – ship which you were captain of, would come forward bloodying his own toes, acknowledging and admitting an error and trying to render justice out of an injustice scenario, and for that I than you and I solute you.

A. Thank you, sir.

Appendix ("E")

Dallas Morning News, The (TX)

STATE DISTRICT COURT
Judge says he made mistake in wrongful death suit ruling
A father's 18-year fight for justice in son's fatal shooting now has help of man who presided over previous trial
RICHARD ABSHIRE Staff Writer
rabshire@dallasnews.com
Published: August 4, 2008

George Evans isn't a lawyer, but he's fought an 18-year court battle for his son, who was killed by a state narcotics officer.

"He's a man on a mission," said John Marshall, now a senior judge who's assigned cases by the state. The complex case is especially frustrating for Mr. Evans because he thought he had it won years ago - until Judge Marshall made a decision he now considers a mistake.

Mr. Evans' 25-year-old son, Tim, was shot to death during an arrest at an East Dallas apartment complex in February 1990. David Eldridge of the Texas Department of Public Safety said that Tim tried to grab his handgun and that there was a fight.

Mr. Eldridge was cleared of wrongdoing in the investigation that followed.

But Mr. Evans said the evidence showed that Tim did not resist arrest, and he sued the state in 1994, alleging wrongful death.

Mr. Evans said he hired and fired some lawyers, but finally decided to handle the case himself. He had attended law school a long time ago but didn't finish.

"No attorney was going to work as hard as I would," he said.

Mr. Eldridge, who is retired from DPS and working as a private investigator in Dallas, declined to comment and referred inquiries to the state attorney general's office.

That office did not make available the attorneys who represented the state in Mr. Eldridge's trial.

The case went to trial in September 1994 before Judge Marshall, who was then presiding over the 14th District Court in Dallas, and the judge granted Mr. Evans' motion for summary judgment.

"The evidence was unequivocal that the officer shot the deceased in the back as he was walking down the stairs," Judge Marshall said. "The deceased had no weapons, no drugs. That was never contested."

The judge denied a similar motion by the state claiming immunity.

Mr. Evans thought he had won, but it got complicated after the state appealed the decision.

In July 1995, an appeals court upheld Judge Marshall's ruling to deny the state's motion and sent the case back to him for trial.

At the trial later that year, Judge Marshall told the jury to decide whether Mr. Eldridge was liable and, if so, to determine damages.

Now he says that was a mistake.

"The case was docketed in such a way that I submitted the entire case to the jury," Judge Marshall said. "That was incorrect. That was an error on my part."

In January 2008, Mr. Evans was back in the 14th District Court, seeking a retrial. He called Judge Marshall, who had been defeated for re-election in 2000, as a witness.

"I should have submitted [to the jury] either 'find liability and find damages' or just submit damages," he testified, according to a transcript furnished by Mr. Evans. "I made a mistake. As a result, the jury came back and they found no liability, so they never reached the issue of damages, which is what the Court of Appeals ordered me to try."

He said he didn't realize his error until Mr. Evans dug up the appeals court's mandate and showed it to him, years later.

Judge Mary Murphy, who replaced Judge Marshall on the bench in the 14th District Court, ruled in the January 2008 hearing that she had no jurisdiction to grant Mr. Evans' motion for a retrial.

In her order, she wrote that the appeals court's ruling dealt with facts relative to the state's claim of immunity from liability and that Judge Marshall's order granting Mr. Evans motion for summary judgment was not part of that decision.

"This court's ruling confirmed lack of jurisdiction only," Judge Murphy said. "No ruling was made on the merits of the case."

Judge Marshall and Mr. Evans disagree with Judge Murphy.

"It's my opinion that if the trial court does not strictly follow the [appeals court's] mandate, that

mandate is alive until it has been fully carried out," Judge Marshall said.

Mr. Evans believes that Judge Murphy should void the 1995 jury verdict exonerating Mr. Eldridge in his son's death, reinstate Judge Marshall's finding of liability and impanel a jury to decide on damages. But because that's not going to happen, Mr. Evans has filed a motion for redress with the Texas Supreme Court, the highest civil court in the state.

Judge Marshall, who has taken a rare stand for a person in his position by openly admitting that he made a mistake, won't be surprised if Mr. Evans keeps fighting his battle all the way to the U.S. Supreme Court, as he has sworn to do.

"There is no such thing as a statute of limitations for justice to be done," he said.

Appendix ("F")

CAUSE NO. 90-01618-A

| | | |
|---|---|---|
| **GEORGE C. EVANS,** PLAINTIFF, | § | IN THE DISTRICT COURT |
| | § | |
| **vs.** | § | OF DALLAS COUNTY, TEXAS |
| | § | |
| **DAVID ELDRIDGE,** et al DEFENDANTS. | § | |
| | § | |
| | § | 14TH JUDICIAL DISTRICT |

## ORDER CONFIRMING LACK OF JURISDICTION

On January 24, 2008, the Court heard Plaintiff's "Motion for Rehearing on Plaintiff's Attach on Prior Judgment Regarding Lack of Jurisdiction." Plaintiff appeared pro se and Defendants appeared by and through counsel. The Court took the matter under advisement to consider the record as to jurisdiction. After considering such record, to the extent still available to the Court, the Court finds that the relevant procedural history of this case is as follows:

1. On September 22, 1994, the trial court entered summary judgment for Plaintiffs, requiring them to proceed to trial on damages. As part of the same order, the trial court denied Defendants' motions for summary judgment relating to immunity (hereinafter the "September 22 Trial Court Order.")

2. Defendants filed an interlocutory appeal as to that portion of the September 22 Trial Court Order denying their summary judgment motions claiming immunity.

3. On April 6, 1995, the Court of Appeals for the Fifth District of Texas at Dallas (the Court of Appeals) delivered its opinion affirming the denial of Defendants' summary judgment motions. As part of the opinion, the Court of Appeals detailed disputed facts related to Defendants' claims of immunity.

4. On July 26, 1995, the Court of Appeals issued its Mandate affirming the denial of Defendants' motions for summary judgment and lifting the stay of trial on the merits.

5. The September 22 Trial Court Order granting Plaintiffs' motion for summary judgment was not, and could not have been, part of the interlocutory appeal.

6. After the trial court stay was lifted, the trial court held a pretrial conference in August of 1995 regarding the issues to be tried, which included Defendants' affirmative defenses of immunity. Thereafter, trial began on September 16, 1995 with Plaintiff George C. Evans as the only plaintiff and David Eldridge as the only defendant. At the time of trial, Plaintiff objected to proceeding to trial on Defendant's immunity affirmative defenses and no ruling appears to have been made by the trial court.

7. At the close of evidence, the trial court charged the jury, which included questions as to Defendant's defenses of immunity. The jury returned a verdict in favor of Defendant and did not reach the issue as to Plaintiff's claim for damages.

8. On November 2, 1995, Plaintiff filed a Motion to Disregard Certain Jury Findings and Motion for Judgment or, in the Alternative, Motion for Judgment Notwithstanding the Verdict, again complaining about submission of Defendant's immunity defenses.

9. On November 7, 1995, the Court signed a Judgment on the Jury Verdict.

10. On December 6, 1995, Plaintiff foiled a Motion for New Trial Or, in the Alternative, Motion to Modify, Correct or Reform Judgment (the "Motion for New Trial"), again complaining about submission of Defendant's immunity defenses.

11. On December 29, 1995, the Court entered a Final Judgment without ruling on the Motion for New Trial. Thereafter, on January 10, 1996, the Court conducted a hearing on Plaintiff's December 6, 1995 Motion for New Trial, and signed an Amended Final Judgment on March 7, 1996, confirming the denial of Plaintiff's Motion for New Trial

12. On February 5, 1996, Plaintiff filed a Notice of Appeal in No 05-96-00314-CV. That appeal was dismissed August 5, 1996 because no record had

been filed within the time allowed by and the Court of Appeals.

13. Almost twelve (12) years later, Plaintiff filed a "Collateral Attack on Judgment" in the same case, claiming that the final judgment in this case is void because the trial court conducted a trial in violation of the July 26, 1995 Mandate from the Court of Appeals. At the December 12, 2007 hearing on Plaintiff's "Collateral Attack on Judgment," the Court advised Plaintiff that this Court no longer has jurisdiction over this proceeding.

14. On January 9, 2008, Plaintiff filed a Motion for Rehearing, and on January 24, 2008, Plaintiff called John Marshall, the former judge of this Court, as a witness, who testified that errors had been committed in the trial, that this Court still has jurisdiction, and that he would reopen this case in the interest of justice if he were presiding.

After examining the file, to the extent available to the Court, and carefully considering the law and procedural history of this case, the Court finds that it has no jurisdiction in this proceeding to hear Plaintiff's request to void the judgment.

It is so ORDERED.

Signed January 31, 2008.

*"s/"*

Judge Presiding

Appendix ("G")

**Writ of Mandamus Denied: Opinion Issued March 14, 2008**

**THE STATE OF TEXAS**

**In the**
**Court of Appeals**
**Fifth District of Texas at Dallas**

---

**No. 05-08-00231**

---

**IN RE GEORGE EVANS, Relator**

---

**Original Proceeding from the 14th Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. 90-01618-A**

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## MEMORANDUM OPINION

Before Justices Morris, Richter, and Mazzant
Opinion By Justice Morris

In this petition for writ of mandamus, relator complains that the trial court has erred in ruling it is without jurisdiction to hear his request to void a 12 year old judgment. Relator has failed to comply

with the requirements for filing a petition for extraordinary writ and he has not shown that he is entitled to the relief requested. *See* TEX. R. APP. P.52.3 and 52.7(a). Accordingly, relator's petition for writ of mandamus is **DENIED**. *See* TEX. R. APP. P. 52.8 (a).

"s/"

JOSEPH B. MORRIS
JUSTICE

Appendix ("H")

**Order Issued March 14, 2008**

**THE STATE OF TEXAS**

**In the**
**Court of Appeals**
**Fifth District of Texas at Dallas**

---

**No. 05-08-00231**

---

**IN RE GEORGE EVANS, Relator**

---

**Original Proceeding from the 14th Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. 90-01618-A**

---

**ORDER**

Before Justices Morris, Richter, and Mazzant

Based on the Court's opinion of this date, we DENY relator's petition for writ of mandamus. We

**ORDER** that relator George C. Evans bear the costs of this original proceeding.

"s/"

JOSEPH B. MORRIS
JUSTICE

Appendix ("I")

**Order Issued April 23, 2008**

**THE STATE OF TEXAS**

**In the**
**Court of Appeals**
**Fifth District of Texas at Dallas**

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**No. 05-08-00231**

---

**IN RE GEORGE EVANS, Relator**

---

**Original Proceeding from the 14th Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. 90-01618-A**

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**ORDER**

Before Justices Morris, Richter, and Mazzant

Relator's March 27, 2008 Motion for

Rehearing is DENIED.

*"s/"*

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JOSEPH B. MORRIS
JUSTICE

Appendix ("J")

THE STATE OF TEXAS

OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248

RE: Case No. 08-0422 Date: 7/11/2008
COA #: 05-08-00231 CV TC#: 90-10536-A

Today the Supreme Court of Texas denied the petition for writ of mandamus in the above-referenced case.

---

MAIL TO:

Mr. George C. Evans
344 CR 1297
Yantis, TX 75497

Appendix ("K")

THE STATE OF TEXAS

OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248

[Stamped by court: "Don't Mess With Texas"]

RE: Case No. 08-0422 Date: 8/29/2008
COA #: 05-08-00231-CV TC#: 90-10536-A

Today the Supreme Court of Texas denied the motion for rehearing in the above-reference petition for writ of mandamus.

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MAIL TO:

Mr. George C. Evans
344 CR 1297
Yantis, TX 75497